

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Affordable Connectivity Program	)	WC Docket No. 21-450
	)	
Emergency Broadband Benefit Program	)	WC Docket No. 20-445
	)	

**COMMENTS OF NEXT CENTURY CITIES**

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**I. Introduction**

Next Century Cities (“NCC”)<sup>1</sup> submits these comments in response to the Wireline Competition Bureau’s request for public input on the Affordable Connectivity Program (“ACP”) implementation.<sup>2</sup> Since the Emergency Broadband Benefit (“EBB’s”) inception, NCC has worked with local and state governments nationwide, elevating local perspectives on implementation, sharing outreach strategies, and developing resources for member municipalities. NCC’s network includes EBB participating municipal providers, community outreach partners, and local officials that are dedicated to bringing affordable and reliable service offerings to their communities.

The EBB provided a first of its kind resource for low-income consumers to be able to afford a broadband connection. At the same time, device and service affordability remain two of the greatest barriers to ubiquitous broadband adoption. While the ACP is a continuation of this

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<sup>1</sup> Next Century Cities is a nonprofit nonpartisan 501(c)(3) coalition of over 200 member municipalities that work collaboratively with local leaders to ensure reliable and affordable broadband access for every community.

<sup>2</sup> See generally, *Wireline Competition Bureau Seeks Comment on the Implementation of the Affordable Connectivity Program*, WC Docket No. 21-450, Public Notice (2021) (hereinafter PN).

program, the transition offers the Federal Communications Commission (“FCC” or “Commission”) a unique opportunity to ensure that the program meets the ongoing affordability needs of the low-income residents that it was designed to serve.

Several policy changes could improve the program’s design. Streamlining the application process for providers and consumers could preserve the integrity of the ACP while also bolstering enrollment. Throughout the EBB program development and launch, local leaders and partner organizations lacked the requisite staff, resources, and information to fully support residents who struggled with various aspects of the enrollment process. The Commission should adopt policies that recognize the essential role that trusted community partners will play in the ACP.

Through outreach grants to local governments and community organizations, adopting a broad definition of devices, and developing a meaningful role for the public to offer ongoing feedback on the program, the Commission could ensure that the ACP makes material strides toward improving broadband adoption. Further, the Commission should create and enforce robust consumer protections to ensure that ACP funding is used wisely and safeguard the program’s legitimacy.

## **II. Streamlining the Application Process for Providers and Consumers Will Improve Service Options and Participation.**

Local governments and their community partners have engaged in outreach campaigns throughout the EBB but acknowledge that funding could help bolster existing efforts. In addition to utilizing new ACP funding to provide resources for municipalities and community-based organizations working to build awareness, streamlining the application processes for both providers and consumers could further aid those efforts.

**A. An Expedited Transition Process from the EBB to the ACP Will Help to Increase the Pool of Participating Providers.**

As the Commission prepares to transfer providers to the Affordable Connectivity Program, it should take steps to decrease the time and administrative burdens for current providers to participate in the ACP. The Commission proposes that existing EBB Program providers automatically participate in the ACP without an additional application.<sup>3</sup> This proposal would expedite the transition process and help ensure continuity of service for customers.

It is also worth noting that efforts by local, state, federal, and tribal organizations to generate record enrollment in the EBB could easily be thwarted by a glacial transition to the ACP. A slow recertification process could result in providers leaving or falling out of the program, further reducing service options for consumers with severely limited alternatives.

Automatic approval for the ACP would also prove beneficial to regional and municipal providers. These providers often offer some of the fastest and most affordable service offerings in the country but have fewer resources to track and participate in a new eligibility and approval process. Guaranteeing their participation in the new program will ultimately increase affordable and reliable broadband options for low-income households in hard to reach areas.

Approving providers automatically should not hinder the Commission's plans to enforce ACP rules. The Commission must hold participating providers accountable for implementing consumer protection measures and providing accurate enrollment information. Throughout the program, community leaders working directly with EBB participants cited several provider actions that violate the Consolidated Appropriations Act and the Commission's rules. As the Commission's Enforcement Bureau rightly states, "Failure to comply with the rules governing the

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<sup>3</sup> PN, at 4, para. 9.

consumer disclosure and enrollment process may lead to customer confusion and loss of service, while potentially providing anticompetitive advantages over other service providers.”<sup>4</sup> Furthermore, local outreach partners rely on the trust earned with members of their community. Instances of provider fraud, if left unaddressed, could undermine that trust and compromise the ACP’s integrity.

Congress vested the Commission with primary enforcement authority over the ACP.<sup>5</sup> The Commission must ensure a reporting system exists for program recipients.<sup>6</sup> It should also invite outreach partners, including municipal and state governments, to submit feedback on ACP providers. This system will enable the Commission to quickly identify any provider practices that mislead ACP recipients. Offenses should warrant enforcement from the Commission. During annual compliance review, the Commission should reconsider participation from providers who have repeatedly violated the Program’s rules.

Automatic and timely transition of providers will accomplish the Commission’s goal of rapidly deploying affordable broadband. At the same time, in order for the ACP to successfully connect households across the country, the Commission must ensure that the program’s rules are consistently enforced and that community partners have a meaningful role in raising concerns as they arise.

## **B. The ACP Should Utilize the USDA’s Community Eligibility Provisions for Enrollment.**

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<sup>4</sup> See *Broadband Providers Participating in the Emergency Broadband Benefit Program Must Obtain Informed Subscriber Consent to Enroll and Require a Copay for Connected Devices*, DA 21-551, Public Notice, 33 FCC Red 8324 (2021), <https://docs.fcc.gov/public/attachments/DA-21-551A1.pdf>.

<sup>5</sup> See Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong., at § 60502(a)(9) (2021).

<sup>6</sup> *Id.*

The Emergency Broadband Benefit allowed individuals and households to qualify through the U.S. Department of Agriculture's free and reduced lunch program. As the Commission prepares to transition the EBB into a permanent program as the ACP, it should continue to allow and support eligibility through this avenue while expanding the Community Eligibility Provision ("CEP"). Automatically qualifying students from schools with high proportions of low-income households, including Provision 2 and Provision 3 schools, can significantly increase qualified enrollment and lead to significant progress in closing the Homework Gap.

The free and reduced breakfast and lunch program has successfully served low-income students and households since 1946 and has kept tens of millions of vulnerable children connected to a necessary service during its tenure. Replicating the targeted success of this program in the ACP will remove a significant administrative burden for eligible families to apply while also decreasing the burden on federal officials to verify individual eligibility for households qualifying under the CEP. Similarly, including Provision 2 and Provision 3 students in ACP eligibility would eliminate pain points in the application process for students in lower-income school districts.

While using the CEP to automatically approve students may lead to a de minimis number of ineligible households receiving program benefits, there is a far greater risk that eligible households may not be able to overcome enrollment obstacles. As one midwestern NCC member municipality explained that in their community, the time required to apply for low-income broadband plans and await installation can serve as a de facto prohibitive cost to broadband adoption. Continuing to use community eligibility in the permanent ACP will aid in lowering that barrier for low-income families and increase program enrollments from eligible households. Thus, the benefit of enrolling a more significant number of eligible households in need will likely far outweigh any potential cost of these errors.

Additionally, investigating a new partnership with USDA's Food and Nutrition Service to gather the necessary documentation and information while minimizing the Commission and recipients' burden. Provision 2 and Provision 3 schools are already required to submit regular information about recipient income levels to state and federal agencies.<sup>7</sup> Coordination with USDA could help the Commission easily verify enrollments without compromising households' ability to easily enroll in the program.<sup>8</sup>

Further, the Commission should allow for documentation from the current or previous academic years. The looming threat of COVID-19 and school districts continuing to operate in novel circumstances could impact students' ability to be re-certified each year, as the Commission states in their notice. Flexibility in documentation years will minimize confusion for households and alleviate pressure on overburdened school districts to provide documentation annually. This allowance will ensure the most comprehensive range of eligible students and households receive the necessary support.

### **B. Providing Consumers Reasonable Time to Rectify Application Failures Will Keep Vulnerable Households Connected.**

The Commission seeks guidance on remedying recertification errors for applications to the ACP, especially those who are also applying for new eligibility or recertification through the Lifeline program. As with any new federal program, potential recipients are often required to complete and submit applications without assistance from government experts. As a result, they should be provided with a reasonable period of time to provide additional documentation and raise

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<sup>7</sup> United States Department of Agriculture, *National School Lunch Program Provisions 1, 2, and 3*, USDA Food and Nutrition Service (May 06, 2014), <https://www.fns.usda.gov/cn/provisions-1-2-and-3>.

<sup>8</sup> See Federal Communications Commission Office of the Inspector General, Advisory Regarding Fraudulent EBB Enrollments Based on USDA National School Lunch Program Community Eligibility Provision (2021), [https://www.fcc.gov/sites/default/files/oig\\_advisory\\_cfp\\_11222021.pdf](https://www.fcc.gov/sites/default/files/oig_advisory_cfp_11222021.pdf).

questions with local, state, or federal support officials. However, for those recertifying through the national verifier, adequate time must also be given to ensure they are navigating the process correctly.

It would also be helpful for the Commission to provide resources online, via a dedicated phone line, and in print documents for distribution. Specifically, print documents could be distributed to schools, local libraries, and other digital navigator organizations that can provide immediate assistance to applicants facing decertification.

The Commission specifically asks, “How should households be timely de-enrolled from the Affordable Connectivity Program upon a failed recertification effort?” If an applicant faces de-enrollment and could not remedy the issue during the allotted period, the Commission should provide reasonable time to seek alternative connectivity options. De-enrollment should only be used as a tool to encourage participants to remedy application failures or when a household no longer needs ACP assistance.

To that end, applicants should be allowed one billing cycle of their current broadband subscription before de-enrollment. This provides adequate time for households, especially those with rigid job schedules and minimal time to re-submit documents, to understand their rejection and make the necessary changes. A more expedited timeline will only harm households that the ACP was designed to support.

### **III. Community-Based Organizations and Localities Are Indispensable Outreach Partners.**

Successful rollout of the ACP relies on the Commission’s continuing ability to maintain existing and forge new partnerships with governmental and non-governmental organizations throughout the U.S. and territories. As the Commission learned through the EBB, there is no

single solution to doing outreach for these critical programs. Unequivocally, there is an ongoing need for the Commission to forge and maintain partnerships that unite municipal governments, anchor institutions, advocates, and community leaders to further the program's mission.

**A. The Commission Must Ramp Up Outreach Efforts to Ensure that EBB Households Can Seamlessly Transition to the ACP.**

Ensuring that EBB participants are able to easily transition to the ACP will be a significant challenge. With the removal of two COVID-19 specific eligibility criteria, eligibility as a result of being eligible for a provider's COVID-19 related program and having experienced a substantial loss of income since February 29, 2020,<sup>9</sup> some consumers may not be able to automatically roll over to the ACP. The Commission must implement processes to inform these households that, when the EBB ends, they are required to recertify their eligibility to participate in the ACP.

EBB providers also participating in the ACP should be required to send notices to their EBB recipients. These notices should include the changes to the program and direct EBB participants to ACP resources that include eligibility guidelines and responsibilities. Many EBB consumers have yet to learn about the transition and would not know if there are actions they are required to take. Households should be informed of the transition and the impacts it could have on their ability to remain connected.

Requiring providers to reach out to the consumers they serve as part of the EBB will not only help to ensure that every participating household is made aware of the transition could affect service continuity, it will reduce bill shock as benefits are lowered. The usefulness of these types of notices cannot be understated..

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<sup>9</sup> See PN at 5 para. 11.

The Commission has proposed that all consumers that are enrolled in the EBB affirmatively opt-in to enrollment in the ACP.<sup>10</sup> This approach could have the unintended consequence of deterring eligible households from enrollment in ACP. For example, of the 6.2 million Lifeline recipients, only about 2.5 million opted into the EBB.<sup>11</sup> Months after the EBB's launch, approximately 3.7 million Lifeline subscribers – who are also eligible for EBB – have yet to opt-in to the EBB.

There is a similar risk here. Requiring many people to opt-in to a new program will likely leave many EBB recipients wondering why they have lost their assistance on March 1st, 2022. Automatic transition for those that do not need to recertify their eligibility will ensure that the Commission is not inadvertently disconnecting consumers that might not be aware of the program's transition. Additionally, in order to avoid bill shock, the Commission should consider a requirement for providers to move consumers that have not stated otherwise to a plan with their current provider that matches the subsidy amount.

In addition, the Commission is in a prime position to coordinate direct outreach campaigns to the households with the greatest need. While many households will benefit from provider and community-based outreach campaigns, some eligible households will only be made aware of the ACP from trusted messengers. The Commission should provide resources and funding for public awareness campaigns created in direct collaboration with the Commission. Moreover, it should use Lifeline and EBB enrollment data to identify areas with low take rates, calling on the Commission's Office of Intergovernmental Affairs to develop targeted outreach strategies with state and local governments.

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<sup>10</sup> See PN at 47 para. 122.

<sup>11</sup> See Colin Lecher and Maddy Varner, *Millions of Prequalified Households Are Missing Out on a Crucial Internet Benefit*, The Markup (Aug. 31, 2021), <https://themarkup.org/news/2021/08/31/millions-of-prequalified-households-are-missing-out-on-a-crucial-internet-benefit>.

Further, the United States Census Bureau has found that Americans speak over 350 languages.<sup>12</sup> Even though the Commission cannot translate information and application documents into every language, it should translate into the languages used by the Census Bureau during the decennial count.<sup>13</sup> If the Commission ensures that information is translated from the outset, those communities will be easier to transition to, or enroll in, the ACP.

A smooth transition from EBB to ACP does not only require significant outreach to eligible consumers, eligible consumers must be able to turn to the Commission to verify program information. As with the EBB, the Commission must maintain a repository of online resources that explains the benefits and responsibilities associated with enrollment. This repository would also be a meaningful place to house frequently asked questions.<sup>14</sup>

### **B. Collaboration Between the FCC and USAC Will Support Centralization of ACP Related Data and Outreach Materials.**

The FCC and USAC play a central role in housing ACP information and data distribution. The Commission has already dedicated significant time and resources to creating and maintaining a centralized repository for information for the EBB. It must continue this work for the ACP. Notably, as the Commission continues to develop new outreach materials it should be certain that it centralizes them in an area that is distinct from EBB outreach materials.

In addition, the Commission must double down on its efforts to reach out to local governments, county leadership, social services organizations, and state offices to promote the

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<sup>12</sup> Press release, U.S. Census Bureau, Census Bureau Reports at Least 350 Languages Spoken in U.S. Homes (Nov. 3, 2015), <https://www.census.gov/newsroom/press-releases/2015/cb15-185.html>.

<sup>13</sup> NCC Comments at 21.

<sup>14</sup> Next Century Cities Comments WC Docket No. 20-445 at 20 (filed Jan. 25, 2021) (NCC Comments).

program. Like participants, local and state leaders are eager to learn about the program's changes, new rules and responsibilities, and how the application process differs from that of the EBB.

The Commission should consider hosting virtual town hall meetings for local and state officials, as well as other non-profit organizations who can help promote the ACP.<sup>15</sup> Throughout the course of the EBB, collaboration with local and state governments, especially local partners, have been critical to signing up households that otherwise would not have been connected.. The Commission must continue to develop and share materials that can be distributed to historically hard to reach communities.

Similarly, USAC can serve as a critical outreach partner to many Lifeline consumers that are eligible for, but not participating in, the EBB or ACP. USAC is responsible for administering many of the low-income communications programs consumers rely on daily. However, consumers are likely unaware of USAC, its mission, or how it impacts their lives. Utilizing USAC as an outreach partner will provide consumers access to information directly from those that are responsible for administering the program. USAC also has access to a wealth of information regarding EBB, Lifeline and E-Rate. Providing local and state officials with enrollment data and success metrics allows USAC to specifically target areas that have low program participation rates.

Finally, the FCC and USAC should leverage the partnerships that have already been forged between communities and community-based organizations during the EBB program development and launch. The Commission should illuminate which local providers are participating in the ACP, what their pricing is for available plans, and whether the subsidy will meet consumers' needs. This type of transparency gives local leaders confidence in working with the FCC and will also be essential for implementing offline advertising strategies.<sup>16</sup>

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<sup>15</sup> NCC Comments at 19-20.

<sup>16</sup> *Id.* at 11.

### **C. The Commission Should Utilize New Tools to Increase Community Outreach and Engagement with Local and State Officials.**

The Infrastructure Act provides resources for the Commission to facilitate consumer research, engage in paid media campaigns, and provide grants to outreach partners. The Commission can utilize each of these tools to ensure that advertisement of the program does not fall singularly on providers and overstretched community-based organizations. For example, Ms. Catalina Rodriguez Lima, Director, Mayor’s Office of Immigrant Affairs, City of Baltimore (“MIMA”) highlighted in a meeting with Chairwoman Rosenworcel the necessity of community-based EBB enrollment support. She explained that without the institutional knowledge of MIMA many families may not have been able to complete the application process or faced extensive delays.<sup>17</sup> Grant funding can provide essential community-based organizations with the resources needed to hire new staff and scale outreach efforts to eligible households.

The use of paid media campaigns is also a critical tool to helping eligible consumers without an Internet connection learn about the ACP. Printed, radio, and television advertisements are critical for informing those without reliable Internet access about the ACP.. The Commission can utilize much of the EBB participation data it has already collected to determine which areas to target with paid media campaigns.

The Commission also seeks comment on the most effective ways in which providers, governmental and nonprofit partners can advertise the ACP. Providers should be required to notify the consumers on their network that are already enrolled in the EBB about the change from EBB to ACP. This would help to ensure that every household participating in the EBB is made aware of the ACP and may be required to continue receiving a benefit. Providers should also promote

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<sup>17</sup> Letter from Next Century Cities to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-445, at 5-6 (filed Sept. 14, 2021).

the ACP to stakeholders within their service area. Naturally, when determining how to set rules regarding how providers must advertise the ACP, reaching out through offline means is also critical..

#### **IV. The Commission Should Expand Who is Allowed to Offer Devices and What Devices are Eligible.**

Connected devices and associated equipment are necessary complements to broadband service. Just as broadband subscription prices keep connectivity out of reach for too many households, device prices are similar. In the face of having to make decisions about which bills to pay each month, many low-income households cannot afford the range of devices and equipment needed to make full use of broadband connectivity. Ample flexibility around which providers may offer devices and which devices are eligible for reimbursement would increase consumer choice and improve overall program effectiveness.

##### **A. The Commission Should Invite Device Refurbishers to Partner with ISPs.**

Flexible rules governing who may offer devices could enable innovative partnerships between community organizations and local governments. Across the country, community organizations are working on refurbishing devices and making them available at a low cost to low-income households.

Enabling community-owned ISPs to partner with refurbishers in their area to provide devices would enable existing partnerships to enhance the ACP. The Commission should also provide explicit guidance about which partnerships are eligible, which would also help to facilitate efficient distribution of information to community-owned providers and device refurbishers.

Furthermore, device refurbishers already have connections with members of the community who are likely eligible for the ACP. Local device refurbishers are trusted community partners who could promote program enrollment, particularly if they are able to offer their own services toward the program. These efforts could go further by expanding connected device eligibility to device refurbishers working in partnership with participating providers.

Importantly, including nonprofit refurbishers provides an indirect check on waste, fraud, and abuse. The Commission identifies several incentives that for-profit providers may have for using the ACP to maximize revenue.<sup>18</sup> Nonprofit refurbishers do not have the same incentives and have an established system to offer high-quality technology that fits within many ACP recipients' budgets. Similarly, allowing non-profit refurbishers to participate in the program with a partnering ISP could allow community-owned networks that already provide high-quality service offerings to also offer devices.

Finally, inviting device refurbishers and community-owned networks to pair their services for the ACP is a good use of scarce federal resources. Doing so would leverage existing community relationships to further the Commission's outreach goals for universal broadband connectivity.

### **B. A Range of Eligible Devices Will Increase the ACP's Effectiveness.**

The Commission should continue including desktops, laptops, and tablets as "connected devices" but expand the list to include mobile devices. The current proposal would exclude devices that independently make calls from the ACP.<sup>19</sup> As the Public Notice explains, there is no clear distinction between mobile phones and tablets.<sup>20</sup> While mobile phones are not a direct substitute

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<sup>18</sup> PN at 24, para. 55 and 27, para. 64.

<sup>19</sup> PN at 26, para. 61.

<sup>20</sup> See PN at 26, para. 61

for computers, program rules should not exclude devices merely because they have cellular capabilities. In effect, the Commission would unnecessarily prohibit devices that might otherwise be the best, or only, option that a consumer has.

Additionally, because the device benefit is limited to \$100, some recipients will have no choice of desktop, laptop, or tablet that fits within the program requirements. Establishing a broad definition of eligible devices expands the range of choices consumers have. Broadly defining eligible devices may also impact whether a participating provider offers a connected device in the first instance.

### **C. Associated Equipment Is a Necessary Complement to the ACP's Broadband Service Offerings.**

Similar to the EBB, the ACP should include associated equipment modems, routers, hotspots, and antennae that are billed to consumers on a monthly basis.<sup>21</sup> Though not explicitly mentioned in the IJJA, including associated equipment as eligible for the ACP is consistent with the core purpose of the program.

The ACP is not designed to offer service for the sake of service, the connection needs to be usable to meet ongoing household needs. Many at-home broadband connections require a modem and router. Additionally, wireless technology is important to enable support for multiple devices connecting to the Internet in the same household. Since only one benefit is allowed per household, multiple people must be able to use the same Internet connection at the same time. For households that include more than one person, in-home wireless equipment may be the only way that students can complete school work, parents maintain employment, and grandparents access telemedicine.

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<sup>21</sup> See PN 25, para. 59.

In short, excluding associated equipment from the program would minimize ACP service's usability and could burden consumers with monthly costs that the ACP was intended to mitigate.

**V. The Commission Must Ensure That There are Adequate Consumer Protections in Place to Prevent Harm to ACP Recipients.**

One only has to turn to Google to find many instances of consumers asking whether the EBB is a scam.<sup>22</sup> There have been multiple reports of providers abusing the program.<sup>23</sup> Provider practices that violate the EBB programs rules do not only harm the consumers that rely on the services, but it also undermines the program's legitimacy.

To safeguard against future program abuses, the Commission must ensure that robust consumer protection measures are in place. Consumer protections should be aimed at guarding consumers against predatory practices as well as strengthening consumer trust.

**A. Any Requirements that Influence a Consumer's Choice in Plan Should Constitute Inappropriate Up or Downselling.**

During the EBB there were reports of providers upselling consumers onto more expensive plans.<sup>24</sup> Even prior to those reports, many people who are eligible for the program chose not to enroll, citing distrust in the program. Practices like upselling and delays in applying the benefit

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<sup>22</sup> Marguerite Reardon, *FTC warns against scams for help with broadband subsidy program*, CNET (Oct. 11, 2021), <https://www.cnet.com/home/internet/ftc-warns-against-scams-for-help-with-broadband-subsidy-program/>; Carly Johnson, *Spot the pandemic scam: emergency broadband program impersonators*, Federal Trade Commission Consumer Information (Oct. 8, 2021), <https://www.consumer.ftc.gov/blog/2021/10/spot-pandemic-scam-emergency-broadband-program-impersonators>.

<sup>23</sup> See e.g. *Broadband Providers Must Apply the Emergency Broadband Benefit Discount Prior to Claiming Reimbursement and are Reminded of Measures to Protect Against Waste, Fraud, and Abuse*, WC Docket No. 20-445, Public Notice (Aug. 20, 2021), <https://docs.fcc.gov/public/attachments/DA-21-1018A1.pdf>.

<sup>24</sup> Jon Brodtkin, *Verizon forces users onto pricier plans to get \$50-per-month gov't subsidy*, arsTECHNICA (May 18, 2021), <https://arstechnica.com/tech-policy/2021/05/verizon-uses-fcc-pandemic-subsidy-to-upsell-customers-to-pricier-plans/>.

exacerbated existing skepticism and influenced decisions for qualified households to abandon the application process.

The Commission seeks comment on what practices constitute inappropriate upselling or downselling.<sup>25</sup> The ACP allows consumers to choose whichever plan offered by a provider at the same terms offered to households that are not eligible.<sup>26</sup> ACP providers should be restricted from requiring recipients to change plans or to choose a specific plan before they are allowed to apply their benefit. If either of these practices occur, they should be considered inappropriate upselling or downselling.

Consumers are best suited to determine what service plan fits within their budget and meets ongoing daily needs. It is unnecessary for a provider to dictate or require a consumer to purchase a plan that they did not intend to purchase. Certainly, providers should be allowed to make recommendations as they are a key partner in helping consumers understand the range of service offerings. However, once a suggestion changes to a requirement, whether actual or implied, then the upselling has become inappropriate.<sup>27</sup>

## **B. Detailed Enrollment Information Will Help the Commission Identify Service and Outreach Gaps.**

The EBB program imposed several crucial consumer information requirements on providers.<sup>28</sup> The Commission now seeks comment on whether it should require providers to make

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<sup>25</sup> PN at 37 para. 93.

<sup>26</sup> American Investment and Jobs Act, Pub. L. No. 117-58, § 60502(a)(7)(A)(i) (2021).

<sup>27</sup> Nicole Ferraro, *FCC cheers 1M EBB signups as ISPs reportedly take advantage*, Broadband World News (May 20, 2021), [https://www.broadbandworldnews.com/document.asp?doc\\_id=769669](https://www.broadbandworldnews.com/document.asp?doc_id=769669).

<sup>28</sup> PN, at 39, para. 99 (The Commission required EBB providers to inform their customers that the EBB was a temporary government program aimed at reducing the customer's Internet service bill. Providers were also required to alert consumers that continued service after the program's end would be billed at the provider's undiscounted rate. Finally, providers disclosed that consumers were able to receive service through any participating provider and that Lifeline recipients must opt in to the EBB program.).

similar disclosure to consumers before enrolling them in the ACP and whether the disclosure must also include the process for lodging a formal complaint against the provider.<sup>29</sup>

Alerting recipients of the conditions of de-enrollment from the ACP will ensure that consumers should expect changes in their monthly bill when they no longer receive the benefit. This is especially critical due to the fact that under the ACP providers are allowed to disconnect a consumer due to nonpayment. This is a significant departure from the EBB, and many consumers who are transitioning from the EBB to ACP may not be consciously aware of this change.

Including the ways in which a consumer can file a complaint is an important informational resource that could enhance the program's integrity. Considering the program is designed to serve residents who do not ordinarily enjoy reliable broadband connectivity, the disclosure should also include offline methods for recipients to flag complaints, including phone and mail-in options. This ensures that if a potential ACP recipient does not complete the application process or is disconnected, they will still be able to lodge a complaint.

Disclosures should also include references to additional resources about the program. As the FCC and USAC continue serving as a central repository for ACP data and program updates, it is imperative that consumers are aware of where the information is available.

### **C. A Consumer Complaint Process That is Easy to Find and Use Will Help the Commission Identify Deceptive Practices.**

One of the major pitfalls of the EBB was that it did not have a dedicated space for consumers to file a complaint. The Commission has an opportunity to course correct with an ACS consumer complaint process that is simple and easy to use.

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<sup>29</sup> *Id.*, para. 100.

Many low-income program participants may not have experience with online complaint reporting. To ensure that the process is constructive, the Commission should provide distinct links to ACP complaint forms and avoid obfuscating information within other FCC-related sites. Providing consumers a dedicated space where they do not need to guess whether they are filling out the right complaint form is essential. The Commission should also make information about the complaint filing process widely available and equip outreach partners with explanatory tools.

The Commission can ensure that it is quickly and efficiently processing complaints by designating specific staff from the Consumer and Governmental Affairs Bureau and notifying providers. This has the dual purpose of supporting the Commission's provider accountability measures while also enabling real-time improvements to the program.<sup>30</sup> Additionally, the Commission can use its already established enforcement powers to initiate investigations of program rule violations. Under those circumstances, the Commission must not discriminate between potential rule violations, thoroughly investigating each potential rule violation.

Finally, the Commission seeks comment on how information about the dedicated consumer complaint process should be disseminated to ACP recipients.<sup>31</sup> The current proposal would require participating providers to center information on the subscriber's bill, the provider's ACP webpage, and on related marketing materials. While this proposal is the most efficient way for consumers to learn about the program's complaint process, the Commission should take the additional step of requiring the provider to disclose how consumers can file a complaint with the FCC when they are signing up for the program.

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<sup>30</sup> PN at 36 para. 87.

<sup>31</sup> PM at 36 para. 89.

The first instance that a consumer hears about the complaint process may happen during the enrollment process. Promoting it from the outset will give consumers more confidence they are sending their complaints to the correct place.

## **VI. Transparency Is A Prerequisite for Effective ACP Oversight.**

Accurate, transparent, and granular information about the ACP could further the Commission's outreach goals and help provide the background information for effective oversight.

### **A. Price Transparency Could Further the Commission's Goals and Protect Consumers.**

Prioritizing price transparency would provide the Commission with necessary information to protect the credibility of the ACP. Particularly as the EBB transitions to the ACP, the Commission must establish review protocols that guard against predatory promotional rate subscriptions.

Throughout the EBB, complaints have arisen about pricing practices that unfairly disadvantage customers. For example, shortly after the program's launch, some EBB recipients complained about being pushed to a more expensive plan in order to receive the benefit. Even after the benefit was applied, recipients did not see a full price reduction reflected on their monthly bills. Rather, moving recipients to a more expensive plan shifted the bulk of the benefit to the provider, while the recipient the benefit was intended to serve saw little to no change in their service price. The Commission bears the responsibility of ensuring that the same complaints do not carry over into the ACP.

Providing transparent pricing information about providers' ACP offerings enables eligible households to make informed decisions about their budget and connectivity needs. Pricing

information is also critical for determining that the level of service being provided is competitive with other service providers in the area. Without information about the prices offered under the ACP, neither recipients nor community partners will have a reference from which they can measure whether prices are comparable. However, this is predicated upon the Commission collecting the information necessary to identify those discrepancies.

Program integrity is necessary to ensure that eligible households maintain confidence that the services offered are fair and consistent. Many households eligible for the ACP may not have enrolled in the EBB because of skepticism about the reliability of the program. Left unaddressed, those concerns will likely persist with the ACP. Equipped with reliable information about service offerings, local governments and community organizations can validate the ACP using trusted messengers in ways that the Commission is simply unable to do.

#### **B. Granular Data Reporting and Tracking Can Inform Local Outreach Efforts.**

The Commission seeks comment on how stakeholders used the data available on the EBB Enrollments and Claims Tracker and how collection of similar data for ACP would be useful.<sup>32</sup> Local and state governments used the enrollment tracker to inform both their own outreach efforts and those of their community partners. More information could further support local outreach efforts and help community leaders identify ongoing needs.

Information about the services offered and in which areas they are available helps ACP recipients understand and weigh their options. State and local governments, and their community partners, can use the information to develop outreach and information resources. Providing

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<sup>32</sup> PN at 45, para. 117.

information about the approximate number of eligible households for the ACP would similarly help local officials and community leaders understand the remaining need in their communities.

Including zip-code based enrollment data is a helpful step in the right direction, but some smaller communities include only one or two zip codes. In those cases, it can be difficult for local leaders to determine where outreach gaps persist. Including more granular data such as participant demographic information and benefit utilization figures could enable communities to tailor outreach resources.

Though the Commission lists providers by state, those providers generally do not offer their services statewide. Releasing information about what zip codes providers have applied to serve will help consumers make more informed purchasing decisions. For eligible households enrolling in the program and the community organizations working to support the enrollment process, plentiful information enhances outreach effort. The more information available to consumers and those helping enrollment efforts ensure that affordable services are ubiquitously available.

## **VII. Conclusion**

The EBB was one of the first programs to effectively target broadband affordability in the United States. The ACP, a continuation of that effort, provides the Commission with an opportunity to incorporate efficiency, best practices, and community-based insights from the EBB that would make the ACP more efficient and easier to use.

Moreover, the unprecedented amount of time that the Commission has spent gathering information and listening to program stakeholders evidences the ongoing need for community outreach and program partner education. Utilizing this information, the Commission now has the

tools to boost ACP enrollment in ways that the EBB program timeline did not allow. The local and state leaders in Next Century Cities' network have the expertise and community-based insights to be ideation partners in that endeavor.